

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Preston Ready-Mix Corporation

Clinton County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2015-WW- 13**

**TO: Kevin W Empen, President
Preston Ready-Mix Corporation
46794 Hwy 64
PO Box 399
Preston, IA 52069**

I. SUMMARY

This administrative consent order (order) is entered into between Preston Ready-Mix Corporation (Preston) and the Iowa Department of Natural Resources (Department) for the purpose of resolving Preston's violations of the terms and conditions of its wastewater National Pollution Discharge Elimination General Permit No. 5 (NPDES permit) and applicable Department rules including general water quality standards. The order assesses a penalty and requires Preston to comply with its NPDES permit and cease all illegal discharges to waters of the state. In the interest of avoiding litigation, the parties have entered into this order and agree to the provisions set forth below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Mark Heiderscheidt, Environmental
Specialist
IDNR Field Office #6
1023 W Madison
Washington, IA 52353
Ph: 319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney

Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Preston Ready-Mix Corporation**

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Preston is a stone quarry and processing facility with quarry dewatering equipment. This facility is known as Yeager-Elwood Bloore Quarry and Elwood Quarry (Elwood Quarry). It is located at Section 8 T83N, R2E Brookfield Township, Clinton Iowa. Elwood Quarry sits on two parcels of land. Merlyn and Carol Yeager are listed as the deed holders for parcel 0601421000 and the contract holders for parcel 0601390000. Donald and Donna Mattke are listed as the deed holders for parcel 0601390000. These parcels are locally known as 1723 110th Street, Maquoketa, Iowa. As part of the quarry operations water is discharged to Prairie Creek, pursuant to NPDES General Permit No. 5 issued to Preston on January 9, 2012.

2. On October 15, 2014, the Department received a complaint alleging that the water in Prairie Creek near the Elwood Quarry was turning yellow.

3. On October 15, 2014, following receipt of the above complaint Mark Heiderscheit, Environmental Specialist with the Department, went to the site to investigate. Mr. Heiderscheit began his investigation at the bridge on 110th Street which is located east of the intersection of 110th Street and 175th Ave. (Site 1). At this location Mr. Heiderscheit observed that the water appeared yellow to the north and south of the bridge. Next Mr. Heiderscheit proceeded upstream to the Elwood Quarry entrance which is located east of 1717 110th Street (Site 2). At this location Mr. Heiderscheit observed silt on the stream bed and that the water had a yellow tint. Mr. Heiderscheit observed silt downstream from this location and upstream to the point of the culvert which goes under the access road to Elwood Quarry. Next, Mr. Heiderscheit proceeded west, upstream, where he observed a trench which had been cut from the Elwood Quarry to Prairie Creek. The bed of this trench was coated in silt. At the point where the water from this trench entered Prairie Creek (Site 3, confluence) Mr. Heiderscheit observed that the water in the stream appeared yellow in color and the creek bed was coated with silt. Upstream from the confluence (Site 4) the water appeared green in color and the creek bed was black or generally dark in color. Mr. Heiderscheit took pictures which documented his observations.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Preston Ready-Mix Corporation**

Next Mr. Heiderscheit entered the Elwood Quarry and met with David Yeager. David stated that he was the son of the property owner. Mr. Heiderscheit informed him of the complaint.

While looking around the Quarry Mr. Heiderscheit observed that a hose was pumping water from the bottom of the quarry to the trench which had been cut. Mr. Heiderscheit observed small corrugated tube running north-south under a road to the trench. The waterway above the road appeared to contain silt and the trench which was draining to the creek also contained silt.

Prior to Mr. Heiderscheit leaving the site he met with Merlyn Yeager. Merlyn stated that Preston was one of the contractors working on site and that in his opinion the silt in the creek was not a problem because Preston had been pumping water to his pond and there had not been any dead fish in his pond. Merlyn also stated that the trench had been cut to open a waterway that had been filled in with silt.

4. On October 29, 2014, the Department sent Preston and Elwood Quarry a Notice of Violation (NOV) for the above discussed water quality violation. This NOV detailed Mr. Heiderscheit's investigation and summarized the relevant law. It also stated that the matter was being referred for enforcement which may include a monetary penalty.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts show noncompliance with this provision.
2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Further, Part 1 Section B of Preston's NPDES permit prohibits any discharge which causes a violation of a water quality standard. The discharge referenced herein did cause a water quality violation and because it was in violation of Preston's permit, the foregoing facts establish that these provisions have been violated.
3. 567 IAC 61.3(2) "c" states that

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Preston Ready-Mix Corporation

c. Such waters shall be free from substances attributable to wastewater discharges ... producing objectionable color, odor or other aesthetically objectionable conditions. ...

The above stated facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the Department orders and Preston agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Preston shall cease all illegal discharges to waters of the State;
2. Preston shall comply with all requirements contained in its NPDES permit; and
3. Preston shall pay a penalty of \$4,000.00 within 30 days of the Director of the Department signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** The wastewater containing silt which was discharged from this facility could have been avoided through the use of alternative disposal methods such as pumping the water to a settling basin. This disposal method would have had additional costs associated with it. Those costs would include: digging a settling basin, setting up lines, and running additional pumps. This additional cost is estimated to be \$1,000.00. Therefore, \$1,000.00 is assessed for economic benefit.

3. **Gravity of the Violation:** Failure to properly manage wastewater from this facility has allowed pollutants to enter Prairie Creek and has contributed to the degradation of the creek's overall water quality. Degraded water quality harms aquatic life, and prevents

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Preston Ready-Mix Corporation

the attainment of state water quality goals. Therefore, \$1,000.00 is assessed for this factor.


4. **Culpability:** Preston has been professionally involved in the business of stone mining and processing for numerous years. Further, Preston was aware of the conditions imposed by its NPDES permit and was aware that the discharge was occurring. For these reasons \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Preston. By signature to this order, all rights to appeal this order are waived.

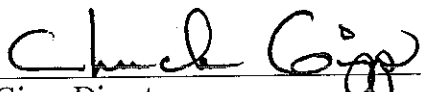
VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Kevin W Empen, President
Preston Ready-Mix Corporation.

Dated this 28 day of
April, 2015.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 5th day of
May, 2015.

Field Office 6, Carrie Schoenebaum; Mark Heiderscheid, I.C.1,6 (a).

